

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, August 17, 2005, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Jon Carlson, Gene Carroll, Dick Esseks, Gerry Krieser, Roger Larson, Melinda Pearson, Lynn Sunderman, Mary Bills-Strand and Tommy Taylor. Marvin Krout, Mike DeKalb, Brian Will, Tom Cajka, Greg Czaplewski, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

Chair Mary Bills-Strand called the meeting to order and requested a motion approving the minutes for the regular meeting held August 3, 2005. Motion for approval made by Taylor, seconded by Carroll and carried 9-0: Carlson, Carroll, Esseks, Krieser, Larson, Pearson, Sunderman, Bills-Strand and Taylor voting 'yes'.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION:

August 17, 2005

Members present: Carlson, Carroll, Esseks, Krieser, Larson, Pearson, Bills-Strand, Sunderman and Taylor.

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 05053 and SPECIAL PERMIT NO. 1689A.**

Ex Parte Communications: None.

Larson moved to approve the Consent Agenda, seconded by Taylor and carried 9-0: Carlson, Carroll, Esseks, Krieser, Larson, Pearson, Bills-Strand, Sunderman and Taylor voting 'yes'.

Note: This is final action on Special Permit No. 1689A, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

CHANGE OF ZONE NO. 05050
FROM AG AGRICULTURAL DISTRICT
TO H-2 HIGHWAY BUSINESS DISTRICT,
ON PROPERTY GENERALLY LOCATED
AT N. 70TH STREET AND ARBOR ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

August 17, 2005

Members present: Esseks, Krieser, Pearson, Taylor, Sunderman, Carroll, Larson, Carlson and Bills-Strand.

Staff recommendation: Approval, subject to an agreement satisfactory to Public Works & Utilities.

Ex Parte Communications: None.

Proponents:

1. Mark Hunzeker appeared on behalf of the **Lincoln Sports Foundation**, owner of the subject property. Three years ago, the applicant requested a change of zone from AG to I-1 on this property. At that time, the owner agreed with the staff that they did not need to have the entire parcel rezoned and agreed to have only the west half zoned H-2. The owner is now in the process of expanding the facilities to include tennis and construction of a facility for tennis use which will extend into the east half of the site. This change of zone is needed in order to maintain the ability to use the site without having to come back each and every time there is a minor modification of a tennis court or soccer field or to construct some sort of a concession stand or restroom facility or the like.

Hunzeker acknowledged that the owner has met with the staff about the concern expressed by Public Works relative to the floodplain. He believes they will reach agreement before this change of zone is scheduled on the City Council agenda. The owner's intent is to take whatever fill is needed to elevate the buildings out of the floodplain from the existing floodplain on the site, and to maintain that policy going forward.

Esseks requested that Hunzeker elaborate as to how the grading plan will result in no significant increase in flooding potential downstream. Hunzeker's response was that the area to the east is very low and, in fact, is far too low for any realistic opportunities for construction of any buildings. There is a wetland area in that vicinity which is going to be restored as part of this project, and they will be extracting soil for fill from that area. It is all within the floodplain and all of the fill will come out of that floodplain area.

Carroll inquired about traffic egress and ingress and whether there will be another entrance. Hunzeker stated that there will not be a need for another entrance at this time. There has been discussion, with some small amount of progress, toward the possibility of a motocross track at the northeastern portion of the site. In the event that occurs, they will definitely need additional access, and at that time they would expect Arbor Road to be improved into the site.

There was no testimony in opposition.

Staff questions

Pearson referred to page 6 of the staff report which states that the agreement between the applicant and city staff should be signed prior to advancing the change of zone to the City Council. Pearson was interested in having the opportunity to review that agreement. Greg Czaplewski of Planning staff indicated that the agreement has not yet been drafted because Public Works has not yet received some of the grading information. The applicant and Public Works have reached an agreement in general terms, but as of now there is no written agreement. The agreement will address the amount of fill being used and how much development can occur that close to Salt Creek. Pearson was not comfortable forwarding the change of zone without reviewing the agreement.

Esseks pointed out that Public Works has to approve the grading plan. He wondered whether there is some standard so that the Planning Commission can be confident, such as an even exchange – the increase in the water retention capacity because of the wetland restoration will equal the increase in the amount of fill that goes on. Marvin Krout, Director of Planning, believes that Nicole Fleck-Tooze of Watershed Management in the Public Works Department will be very careful about how the agreement is written. It is possible that they will not reach agreement on the details but he believes there is a good understanding of the generalities. There is a portion being used now that is in the floodplain and that area, with the exception of some possible small future building sites, would be left in the floodplain. The fill that would be required would be limited to a certain number of cubic yards and the fill would have to come from the property in the floodplain. There would be direct transfer of excavation of fill within the site. This is in Salt Creek in an existing developed area so this property owner could go out and get a fill permit. Staff appreciates their cooperation in dealing with the floodplain issues.

Response

Hunzeker agreed with Mr. Krout. The owner has the ability to get a fill permit to bring fill in from outside the site today; however, the owner is agreeing with Public Works to be subjected to an agreement that is much more restrictive than existing regulations. Hunzeker likened it to an annexation where the Planning Commission approves the annexation but does not review the annexation agreement.

ACTION BY PLANNING COMMISSION:

August 17, 2005

Larson moved approval, subject to an agreement satisfactory to Public Works & Utilities, seconded by Sunderman.

Pearson stated that she is having a hard time approving something she has not seen. She disagrees that an annexation agreement is similar to a change of zone. While they have the right to fill to wherever they want with offsite fill, she is doubtful they would do that. She is confident that the applicant will do the right thing but she has a hard time forwarding it without seeing the document. She would prefer a two-week delay to see the agreement.

Bills-Strand commented that it is not unusual for the Planning Commission to leave the details to be worked out before they get scheduled on the City Council agenda.

Motion for approval, subject to an agreement, carried 8-1: Esseks, Krieser, Taylor, Sunderman, Carroll, Larson, Carlson and Bills-Strand voting 'yes'; Pearson voting 'no'. This is a recommendation to the City Council.

COUNTY SPECIAL PERMIT NO. 05039,
WAGON TRAIN ESTATES COMMUNITY UNIT PLAN;
AND
COUNTY PRELIMINARY PLAT NO. 05013,
WAGON TRAIN ESTATES,
AND
COUNTY SPECIAL PERMIT NO. 05038,
TO ALLOW DWELLING UNITS WITHIN 1320
FEET OF A PUBLIC LAKE,
ON PROPERTY GENERALLY LOCATED
AT SOUTH 96TH STREET AND WAGON TRAIN ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

August 17, 2005

Members present: Esseks, Krieser, Pearson, Taylor, Sunderman, Carroll, Larson, Carlson and Bills-Strand.

Staff recommendation: Conditional approval.

Ex Parte Communications: Esseks submitted an e-mail from the President of the Wachiska Audubon Society in opposition.

Mike DeKalb of Planning staff submitted additional information, including two letters in opposition and an additional name to add to the petition in opposition.

Proponents

1. Charlie Humble, 301 S. 13th Street, appeared on behalf of the applicants who are two sisters, Connie Rousch and Darci Kvasnicka. This is a 21+ acre tract which has been in the family for many years. These two sisters have always had a dream to have acreages out here and to have some of the other property sold off to make a nice development. Toward that end, they filed the application to change the zone from AG to AGR, which was granted by the County Board in the spring of this year, which has led to these applications.

The issue to which Game & Parks is concerned relates to a forced preservation of private land and devotion of private lands to a public use, i.e. hunting in a recreation area. If it is so important for the preservation of hunting, then Humble suggests that the private land ought to be acquired by the state for public purpose. Humble showed a map demonstrating that this proposal is not a big imposition on the hunting area.

Humble expressed appreciation for the efforts of the staff to indicate that there should be a reasonable use of the property. The applicants prefer three-acre parcels and they would prefer to have six of them. They have looked hard at trying to make a reasonable setback.

2. Lyle Loth of ESP also appeared on behalf of the applicants to address the conditions of approval set forth in the staff report. He discussed the conditions in Article 13.012 of the County Zoning Resolution which sets forth special permit provisions for dwellings within 1320' of the property line of a publicly owned lake of 30 acres or more. He pointed out that the County Board may amend any of such conditions upon a showing of exceptional and unusual circumstances.

With regard to the condition that no sewer effluent should be discharged to the lake, Loth stated that at least five, and possibly all six, of the individual sewer systems serving these six parcels are downstream and any overflow (which is unlikely) could not flow by gravity into the lake. These systems will either be lagoons or underground septic systems, which are considered by EPA and NDEQ to have a zero discharge. These systems will be designed and built in accordance with NDEQ rules and regulations for on-site wastewater systems. The acreages across the way have lagoon systems and that is probably the likely scenario in this development.

With regard to well information being provided, Loth advised that they did contact the Health Department when they first started this project. The indication of the Health Department was that they have not experienced any problems with groundwater in the area and that they believe the quantity and quality is adequate for this development and that this development will not cause problems with any of the neighbors' wells.

With regard to the 200' native grass buffer, Loth indicated that it would basically preclude any building on any of Lots 4, 5 or 6. Loth believes they could accommodate a 150' buffer at the rear of the lots, leaving a 70-72 ft. strip upon which to build the homes.

With regard to density (the zoning regulations suggest no less than 5 nor more than 10 acres per dwelling unit), Loth suggested that this lot size is contradictory to the Comprehensive Plan, which states that six percent of Lancaster County population should be accommodated by acreages. Grouping these acreages together would enable a more efficient use of the land, providing for more preservation of agricultural land and reduce the amount of paved roads required and fewer and shorter bus routes. This area has been zoned for low density residential and, with the guidelines in the Comprehensive Plan, it would be desirable to put as much density on that acreage as possible.

Loth submitted proposed amendments to the conditions of approval to provide a 150' vegetative buffer and setback from the property line of the lake (as opposed to 200'); and to allow six single family lots.

Opposition

1. DaNay Kalkowski appeared on behalf of a group interested in preserving the peacefulness and usefulness of the lake and recreation area for hunters, campers, anglers, boaters, hikers, bikers, etc. She submitted a petition in opposition signed by 351 people opposed to development that affects the usefulness of the Wagon Train lake and recreation area. Wagon Train is a 315-acre lake surrounded by 745 acres of public lands. Kalkowski also appeared when the change of zone was approved and her purpose was to put the owners on notice that there were people who have concerns about protecting the lakes. The 600' (200 yards) setback would effectively prohibit any residential development on that site. The Planning Commission voted to deny the change of zone; however, the County Board did approve the change of zone to AGR.

Now that the preliminary plat and special permit are before the Commission, the biggest concern of Kalkowski's clients has happened – the owner submitted the development plans for the property, ignoring the special permit conditions required for dwellings within 1320 feet of a publicly owned lake. The special permit conditions which provide protection for the lake are listed on page 5 of the staff report. With those protections in place, the DEQ, NRD and Environmental Trust invested money to rehabilitate Wagon Train Lake and then to improve ponds and streams that carry water to the lake. Today, Wagon Train is a recreational area in which the taxpayers have invested millions of dollars to protect so that it provides economic benefit to the surrounding community.

Kalkowski also submitted proposed amendments to the conditions of approval requesting that no occupied buildings or livestock feeding shall be within 400' (instead of 200') of the park boundary, including the following language:

...sewer systems shall be designed so no effluent will reach the lake, any disturbance of surface soils shall use "Best Management Practices" to prevent sediment from moving off the site, the boundary between private and public ownership shall be posted as "private property", protective covenants shall be filed on the property acknowledging and advising future purchasers of the full utilization of all legal uses and activities that would normally occur on the abutting public lake property,....

Kalkowski stated that the most prominent special permit condition which has the largest impact is the requirement that all dwellings be located a minimum of 600' from the property line. Strict application of this setback would prohibit residential development of the property; however, she recognizes that the County Board can amend this condition. The Planning Department has recommended a 200' setback based upon measurements taken from the existing property to the east. Kalkowski requested that the setback be no less than 400', to more closely match the setback for the existing house to the east.

Esseks wondered how many lots could be built with the 400' setback. Kalkowski believes they could still get the four lots as indicated in the staff report. There would still be a 200' strip of buildable area along the road.

2. Dale Finke, who lives across the street to the south at 9701 Wagon Train Road, testified in opposition. His home is 422' x 483'. He chose to remain neutral during the change of zone application; however, his name was noted as being in favor and that was not correct – he took a neutral position at that time.

Finke pointed out that two of the proposed dwellings would be almost directly across from his house, which is 500' to the driveway. He will be looking at the back of those homes with possibly one lagoon within 200' of his property line. He advised that he drilled three wells. There were 4.67 acres to look for water and they only found it in one source. Therefore, he questions the availability of water in the area. He also believes that six new wells could affect the limited water supply. There is no access to rural water. He has witnessed many deer, quail, turkey and pheasants on the land. He urged that six homes would be too much of a burden.

3. Heidi Hornung-Scherr, who lives in the farm house to the east of the proposed development, testified in opposition. Her house was built in 1895 and originally included the entire quarter section. Most of the section was sold when the lake was built. Hornung-Scherr indicated that she did not protest the zone change, choosing to give the applicants a chance to propose a responsible development; however, she is here today in opposition. She and her family are frequent users of the lake. Her concerns are water quality and quantity, stormwater runoff and sewage treatment. She believes it is the developer's burden to show adequate water on the site. The developers did not present any information on this point. She requested a copy of the letter from the Department of Health referenced by the proponent. There has been no independent investigation of the quantity and no information on quality.

The last well drilled in 1991 resulted in multiple problems with the drilling. She submitted a letter from Scott Summerside, Associated Geoscientist and Research Hydrogeologist with the School of Natural Resources-Conservation and Survey Division of the University of Nebraska-Lincoln. This letter states that it is difficult to obtain good groundwater supply in this area; that the soils do not transmit water readily to wells; that the chances for a successful conventional well in this area are not good; and that the groundwater supplies in the area are indeed marginal. There is rural water available 1/4 mile south of Martell Road. She contacted the rural water district, which indicated that rural water would be a viable option and would cost between \$30,000 and \$40,000.

With regard to water quality, Mr. Summerside states that water quality deteriorates quickly if they attempt to drill too deep. Hornung-Scherr has had two water filtration systems. There needs to be sufficient evidence presented to show there is adequate quality and quantity and that adjacent wells will not be adversely impacted.

With regard to stormwater runoff, Hornung-Scherr noted that the property drops from the west to the east. In 340 yards, it drops over 30 feet. The plat shows the low point being the southeast corner, but the most water accumulation comes on the north end. The land was terraced by the farmer to prevent erosion. There is a great deal of water runoff and erosion at both the north and south end. She believes the County Engineer should be asked to determine whether this is appropriate and whether they need stormwater detention. She would also request that the DEQ be asked to review the plans to see if this is adequate space for lagoons.

Hornung-Scherr submitted proposed amendments to the conditions of approval regarding these issues.

The Hornung-Scherr house is 385' from the rear property line.

Staff questions

Esseks asked staff for justification of the staff recommendation of 200' versus 600' setback. Mike DeKalb of Planning staff explained that the 600' is the setback recommended in the zoning regulations; however, it is adjustable by the County Board. The staff recommendation presumes that the approval of the change of zone did in fact presume some development of the land. The recommendation of 200' was an attempt at a compromise, reflecting the measurements of the barn, the outbuildings and a house that exist. The 600' shooting restriction by the state applies both to occupied houses and areas where animals are confined. He believes that the 200' recommendation fits with what is occurring on the east.

Esseks inquired as to the impact of a 400' buffer. Would there be room for some lots along the public roads? DeKalb deferred to the applicant.

Carlson assumes the rationale for 600' has something to do with rifle range or shot gun range. DeKalb explained that the 600' comes from state law relative to where you can hunt. He does not know how the number was derived. Carlson believes the rationale is to provide safety for the occupied houses from the hunting.

Bills-Strand wondered whether the setback could be 400' on part of the property. DeKalb noted that the north and east corners are closest to the lake. The 600' is not for water protection per se, but for people using the dry land for hunting purposes.

Response by the Applicant

In connection with the use of the lake, Humble observed that there may be some impact if this was a high hunting area, but it is not a high hunting area. There are many uses of that lake and this development will have no negative impact whatsoever on any of those uses.

Humble also suggested that if a lagoon is needed, the development must stay 50' away from their own property line and must comply with all of the regulations regarding sewage and wells. Lots cannot be sold without meeting those regulations.

In regard to water quality, Humble referred to the letter in the staff report from Chris Schroeder of the Health Department, which states that existing Health Department information indicates that an adequate supply of groundwater exists in the area for domestic use. Humble believes that statement also includes an implicit reference as to quality of the water.

In regard to the stormwater runoff, Humble stated that there are standards to which they must comply. This issue would typically be addressed at the time of siting the road. Those issues will be addressed and the runoff will be shown in detail.

In reference to the number of lots, Humble indicated that the developer does not know the effect of a 400' setback. There might be 3-4 lots that would be usable, but they have not done the engineering work. Humble believes that six lots are reasonable with the 150' setback being requested by the applicant, and he does not believe six lots is an undue impact on the area, certainly not on the lake. This is not a high priority hunting ground. The six lots are a reasonable use and Humble requested that the application for six lots be granted with the waivers being requested.

Pearson asked the applicant whether they would agree to comply with the amendments requested by Ms. Hornung-Scherr regarding the water issues. Loth reminded the Commission that they did contact the Health Department before making application for this development, and the Health Department indicated that they were satisfied that there is adequate water, thus there was no need to do any test drilling nor prepare a water report.

From this point forward, there will have to be some drilling done to make sure there is water available before selling any of the lots. It is certainly an option to go to the rural water district, if necessary. Humble noted that the procedures are in place to make sure they can get water.

Loth stated that the 400' buffer would put the three to four lots basically fronting out to Wagon Train Road, which is basically the low side of the land. From the street, it slopes to the south toward Wagon Train Road. If the houses are constructed closer to the road, they would have to pump the wastewater back up the hill to the north, which would require pumping equipment in the home itself. The lagoon must be 100' from the residence, 200' from the neighboring residence and 50' from the property line. The Health Department report states that if lagoons are to be considered, the lots must be a minimum of three acres, excluding all area below the normal high water level of any surface water feature, all area below ten-year flood elevations and all area within the right-of-way or easement of street, road or access easement. Therefore, the development is restricted on placement of the lagoon. Loth believes they could have three to four houses, but it would involve additional pumping for the sewage treatment.

Pearson noted that the applicant is proposing a 150' buffer. Is it possible that the road could shift further south if we were to maintain the 200' buffer as recommended by staff? Can you still get in the number of lots? Loth stated that it would eliminate at least one home. Then the question starts to become the 3-acre requirement. They have three acres now, so if they move the road down he is not sure they could reasonably get three acres to accommodate the sewer systems.

Humble offered that the three acres is more efficient use of land. Five acres result in a lot of waste land and areas that are not maintained.

SPECIAL PERMIT NO. 05039**ACTION BY PLANNING COMMISSION:**

August 17, 2005

Taylor moved to approve the staff recommendation of conditional approval, seconded by Pearson.

Esseks moved to amend the setback to 400', seconded by Carlson. Esseks does not think the Commission should be trying to legislate a further exception. The zoning ordinance apparently provides for an exception of 600' and it seems we should stick with that, but since the County Board approved the AGR zoning and since the owners in March of this year paid \$150,000 for the land, it seems that we have some obligation to let them develop at least part of it to recoup their investment. He thinks 400' is reasonable.

Motion to amend the setback to 400' failed 3-6: Esseks, Carlson and Bills-Strand voting 'yes'; Krieser, Pearson, Taylor, Sunderman, Carroll and Larson voting 'no'.

Pearson moved to amend the conditions of approval as requested by Heidi Hornung-Scherr, seconded by Carlson. Pearson does not believe this is an additional burden on the applicant. These amendments sort of clarify that if there is a water problem there will be a solution acceptable to the neighbors. Motion to amend carried 5-4: Esseks, Pearson, Taylor, Larson, and Carlson voting 'yes'; Krieser, Sunderman, Carroll and Bills-Strand voting 'no'.

Discussion on the main motion for conditional approval, as set forth in the staff report, with the amendments proposed by Heidi Hornung-Scherr:

Carlson appreciates the amendments, but he will vote no on this application. We have an application that asks us to balance public versus private interests. The public interest is clearly being forwarded by private property owners, interest groups and the government. The private interest is maintained because of the AG zoning. The owner could have put a farmstead on AG wherever desired. Now what we have is an application to go further than that for more than one farm house. At that point, you're talking about six lots. The degree to which there is so much manipulation and so many exceptions indicates to Carlson that the Planning Commission was correct in its initial assumption that this is not a piece of property that should have been changed to AGR in the first place. He does not believe that six lots is the balancing point between the public interest and the private interest.

Pearson agrees that this is a private versus public issue and it is a difficult situation. She will vote in favor because she believes it does allow development of the area but does not allow encroachment into the lake area any more than what is already there, which is the 200'.

Taylor wishes there was more of a compromise in terms of the distance. He believes the property owners have an opportunity to sell. He is in favor of the development, with the amendments regarding the water quality.

Main motion for conditional approval, as set forth in the staff report, with the amendments proposed by Heidi Hornung-Scherr carried 7-2: Esseks, Krieser, Pearson, Taylor, Sunderman, Carroll and Bills-Strand voting 'yes'; Larson and Carlson voting 'no'. This is a recommendation to the Lancaster County Board.

COUNTY PRELIMINARY PLAT NO. 05013

ACTION BY PLANNING COMMISSION:

August 17, 2005

Taylor moved to approve the staff recommendation of conditional approval, with the amendments proposed by Heidi Hornung-Scherr, seconded by Sunderman and carried 8-1: Esseks, Krieser, Pearson, Taylor, Sunderman, Carroll, Larson and Bills-Strand voting 'yes'; Carlson voting 'no'. This is a recommendation to the Lancaster County Board.

COUNTY SPECIAL PERMIT NO. 05038

ACTION BY PLANNING COMMISSION:

August 17, 2005

Taylor moved to approve the staff recommendation of conditional approval, with the amendments proposed by Heidi Hornung-Scherr, seconded by Sunderman and carried 8-1: Esseks, Krieser, Pearson, Taylor, Sunderman, Carroll, Larson and Bills-Strand voting 'yes'; Carlson voting 'no'. This is a recommendation to the Lancaster County Board.

ANNEXATION NO. 05012:

CHANGE OF ZONE NO. 05055

FROM AG AGRICULTURAL TO I-3 EMPLOYMENT CENTER:

and

USE PERMIT NO. 05007

ON PROPERTY GENERALLY LOCATED

AT N.W. 56TH STREET AND WEST O STREET.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

August 17, 2005

Members present: Esseks, Krieser, Pearson, Taylor, Sunderman, Carroll, Larson, Carlson and Bills-Strand.

Staff recommendation: Approval of the annexation, subject to an annexation agreement; approval of the change of zone; and conditional approval of the use permit.

Ex Parte Communications: None.

Tom Cajka of Planning staff submitted an amendment to add Condition #1.1.17 to the use permit to "Make revisions to the satisfaction of Public Works & Utilities Watershed Management as stated in their report of August 18, 2005."

Proponents

1. Mark Palmer appeared on behalf of the applicant. The applicant has agreed with the conditions of approval; however, one of the conditions requires a waiver to the setback requirements on one of the internal roads, which is a waiver that needs to be advertised.

Therefore, Palmer requested a two-week deferral.

Larson moved to defer for two weeks, with continued public hearing and action on August 31, 2005, seconded by Carroll and carried 9-0: Esseks, Krieser, Pearson, Taylor, Sunderman, Carroll, Larson, Carlson and Bills-Strand voting 'yes'.

There was no other public testimony.

MISCELLANEOUS NO. 05015,
TO REVIEW THE PROPOSED DETERMINATION THAT
THE WEST O STREET REDEVELOPMENT AREA
BE DECLARED A BLIGHTED AND SUBSTANDARD AREA.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

August 17, 2005

Members present: Esseks, Krieser, Pearson, Taylor, Sunderman, Carroll, Larson, Carlson and Bills-Strand.

Staff recommendation: A finding that the area is blighted and substandard.

Ex Parte Communications: None.

Proponents

1. **Darl Naumann**, Economic Development Coordinator for city and county, made the presentation. Two years ago, the city was approached by the West O Area Business Association with the question: "How can you make West "O" better for us?" The administration looked at several options and the answer was simple: targeted development with private companies investing on "O" Street is probably the best solution. The blight study is a tool to address targeted development.

The West "O" Area Business Association begins at the Harris Overpass and continues on to Nebraska Machinery and Lincoln Poultry. The total area studied includes 1361 acres along West "O" Street. The area shares many features from large undeveloped areas from the Harris Overpass to the far reaches of West "O" Street. Sixty percent of the parcels are vacant or undeveloped. The railroad tracks on the south of "O" Street often lead to narrow lot sizes. The area is characterized by lack of sidewalks and dead-end streets. The West "O" Area Business Association and the West "O" Street communities also share two entry points off of Interstate 80. This is a corridor for an entry point into the city. West "O" Street used to be the primary entrance into the city. With I-80 and Capitol Parkway, West "O" Street became an alternate route into the city, resulting in undeveloped areas and what we consider blight.

Naumann explained that designation of this area as blighted and substandard can offer businesses access to facade improvement loans out of the Community Development Block

Grant fund, loans that cannot be granted to West "O" without this designation. It also provides possibility for tax increment financing (TIF). TIF is a funding mechanism that cities can use to help pay for costs of public improvements associated with private development and redevelopment projects in areas that have been officially designated as blighted and substandard. While TIF has been utilized in Nebraska for about two decades, it has been used nationally for over half a century and is an incentive to boost targeted development projects in blighted and substandard areas.

Naumann then proceeded to explain the TIF process. TIF does not impact current tax collections. Taxes derived from the increases in assessed value is the increment resulting from the new development and increased valuations are used to pay infrastructure costs and related development expenditures in the TIF districts. In 1980, the Nebraska voters approved a constitutional amendment permitting the use of TIF to help finance development in blighted and substandard areas.

Naumann advised that Downtown Lincoln was the first area to use TIF, and it was identified as blighted and substandard. There has been response to the needs of other blighted areas in the city and additional redevelopment plans were drafted that enabled TIF to be used on N. 27th Street, Havelock, University Place, Antelope Valley, 48th & O and now West "O". West "O" Street meets the criteria of the Legislature to be declared as blighted and substandard.

2. Don Wesely appeared on behalf of **Lincoln Poultry and Nebraska Machinery** in support of the designation of blighted and substandard because it is essential to the Lincoln Poultry project which was on today's agenda and will be heard on August 31st. The blight designation leads to a redevelopment plan and Lincoln Poultry's intention is to come back with a redevelopment agreement that will be a major investment along West "O" Street. It is essential that this area be declared blighted and substandard; otherwise, the Lincoln Poultry project will not happen. The Lincoln Poultry site includes about 74 acres that would be annexed by the city. Lincoln Poultry only needs about 20.3 acres, leaving 45 acres for other development. There is a need for industrial land in this city. We need more sewer and services in place for industrial property. Without the blight designation and TIF funding, Lincoln Poultry will not be able to proceed. Next to Lincoln Poultry is an area that goes to NW 56th which is Nebraska Machinery property. They also desire to move forward with a new project and are working on the first phase, which is a truck facility. The bulk of the project waits for this designation and the potential for TIF.

3. Randy Haas, 9440 Montello Road, President of **West "O" Area Business Association**, which has been in existence for over 20 years and has recently grown to over 100 members, testified in support. He concurred that about two years ago, the association started working with Urban Development to explore ways to improve the West "O" area for business conditions and as an entrance to the city. The association helped pay for the blight study and

is very interested in streetscape improvements for a better impression of the West "O" area. With the Harris Overpass reconstruction, it is pretty imminent that improving the West "O" area is a good addition to the city.

4. Carl Sjulín, President of **West Gate Bank**, testified in support. West Gate Bank was founded in 1968 on West "O" Street at Capitol Beach Boulevard, and has been very involved in financing businesses in the proposed redevelopment area for 37 years. Although West "O" has experienced some level of economic activity, it has lagged in comparison with the other areas of Lincoln. Adoption of the redevelopment proposal will be the first step toward maintaining this a much better area. The availability of TIF for projects would significantly increase the amount of economic development and help jump start growth in this area. This will also help in the concentric growth concept. TIF will also help with some of the improvements and infrastructure that are not in this area that are available in other parts of the city. West "O" has tremendous potential.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION:

August 17, 2005

Larson moved to find the West "O" Street Redevelopment Area as blighted and substandard, seconded by Carlson and carried 9-0: Esseks, Krieser, Pearson, Taylor, Sunderman, Carroll, Larson, Carlson and Bills-Strand voting 'yes'. This is a recommendation to the City Council.

*** break ****

CHANGE OF ZONE NO. 05040
FROM O-3 OFFICE PARK TO B-2 PLANNED NEIGHBORHOOD BUSINESS
and
USE PERMIT NO. 05004
FOR OFFICE AND COMMERCIAL FLOOR AREA,
ON PROPERTY GENERALLY LOCATED
AT SOUTH 14TH STREET AND YANKEE HILL ROAD.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:

August 17, 2005

Members present: Esseks, Krieser, Pearson, Taylor, Sunderman, Carroll, Larson, Carlson and Bills-Strand.

Staff recommendation: Approval of the change of zone and conditional approval of the use permit.

Ex Parte Communications: None.

Proponents

1. **DaNay Kalkowski** appeared on behalf of **Wilderness Woods Joint Venture**, the owners of five acres located at the southeast corner of South 14th and Yankee Hill Road. This property is currently zoned O-3 and abuts the Wilderness Ridge 9-hole executive golf course on the south side and the Wilderness Woods office park.

This is a request to change the zoning to B-2 Planned Neighborhood Business District with a use permit for 31,500 sq. ft. of commercial uses, including restaurant and convenience store. This use is in conformance with the Comprehensive Plan and provides a retail component to the office park that exists to the south. These applications have been held over several times because the applicant wanted to work with staff on the conditions to make sure they would be able to resolve the issues before coming before the Planning Commission. Kalkowski indicated that this has been accomplished and revised plans have been submitted to address the Public Works concern on the traffic issues.

Kalkowski submitted a proposed motion to amend the conditions of approval, to which staff has agreed.

The developer did hold a neighborhood meeting early on in the process of developing this project but there was very little interest.

Carlson asked for clarification of the sidewalk locations. Kalkowski noted the sidewalks on both sides of Executive Woods Drive as it comes from the office park property. There are sidewalks along Yankee Hill Road and sidewalks going down in front of all of the buildings and two other connections for pedestrians coming along Yankee Hill Road who want to get into the site. Carlson noted that the applicant is requesting to waive the sidewalks off of Executive Woods Drive because there will not be a road connection. Kalkowski concurred, pointing out that there will be sidewalks along Yankee Hill Road.

Esseks noted that Outlot A has been removed. Kalkowski concurred, stating that previously they were doing the building pads under the other plan. The revised plan goes back to three specific lots so there is no need to designate Outlot A any longer.

There was no testimony in opposition.

Brian Will of Planning staff acknowledged that the staff concurs with the proposed amendments to the conditions of approval.

Carlson referred to the amendment to Condition #1.1.3. Will clarified that this condition accommodates the right-of-way that the city will be seeking.

CHANGE OF ZONE NO. 05040

ACTION BY PLANNING COMMISSION:

August 17, 2005

Carroll moved approval, seconded by Esseks and carried 9-0: Esseks, Krieser, Pearson, Taylor, Sunderman, Carroll, Larson, Carlson and Bills-Strand. This is a recommendation to the City Council.

USE PERMIT NO. 05004

ACTION BY PLANNING COMMISSION:

August 17, 2005

Carroll moved to approve the staff recommendation of conditional approval, as revised, with the amendments requested by the applicant, seconded by Krieser and carried 9-0: Esseks, Krieser, Pearson, Taylor, Sunderman, Carroll, Larson, Carlson and Bills-Strand. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 05042

FROM O-3 OFFICE PARK

TO B-2 PLANNED NEIGHBORHOOD BUSINESS

and

USE PERMIT NO. 89C,

FOR RETAIL AND OFFICE DEVELOPMENT,

ON PROPERTY GENERALLY LOCATED

AT SOUTH 14TH STREET AND PINE LAKE ROAD.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:

August 17, 2005

Members present: Esseks, Krieser, Pearson, Taylor, Sunderman, Carroll, Larson, Carlson and Bills-Strand.

Staff recommendation: Denial.

Ex Parte Communications: None.

The Clerk announced that the applicant has requested an additional four-week deferral, with continued public hearing and action scheduled for September 14, 2005.

Carroll moved to delay until September 14, 2005, seconded by Pearson and carried 9-0: Esseks, Krieser, Pearson, Taylor, Sunderman, Carroll, Larson, Carlson and Bills-Strand voting 'yes'.

COMPREHENSIVE PLAN AMENDMENT NO. 05011
FOR A CHANGE FROM GREEN SPACE AND PUBLIC AND
SEMI-PUBLIC TO COMMERCIAL ON PROPERTY LOCATED NEXT
TO THE LANCASTER COUNTY EVENTS CENTER ON THE
SOUTHEAST CORNER OF NORTH 84TH STREET AND HAVELOCK AVENUE.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:

August 17, 2005

Members present: Esseks, Krieser, Pearson, Taylor, Sunderman, Carroll, Larson, Carlson and Bills-Strand.

Staff recommendation: Denial.

Ex Parte Communications: None.

The Clerk announced that the applicant has requested an additional deferral, with continued public hearing and action scheduled for September 28, 2005.

Taylor moved to delay until September 28, 2005, seconded by Carroll and carried 9-0: Esseks, Krieser, Pearson, Taylor, Sunderman, Carroll, Larson, Carlson and Bills-Strand voting 'yes'.

Public Testimony

The applicant was not present.

1. Peter Katt appeared on behalf of **Prairie Homes**. This amendment relates indirectly to the Prairie Village North project that will be on the Planning Commission agenda on August 31st. This property lies in the 84th/Havelock/Adams Street area. The boundary on the south side is the Murdock Trail and directly south of this property is the Prairie Village North project which is coming forward again in two weeks. One of the issues is dealing with floodplain, which affects the Events Center property and a significant portion of the Prairie Village North project. The proposed Events Center site plan is predominantly floodway and floodplain. Katt stated that the point is that "we are planning North 84th Street". The Events Center property is significant in terms of the overall plan. Prairie Homes is bringing forward a project directly to the south and the question is a policy question: How should these projects on both sides of the Murdock Trail relate? He has tried to involve the city in discussions on the Murdock Trail and it seems to be an impermeable barrier. Katt believes there should be some planning for how to remove Murdock Trail as a barrier between these two projects and address the floodplain area. We need to take advantage of the floodplain opportunity on the Events Center property and the property to the south, and make a good use of that property in this area.

In terms of this Comprehensive Plan Amendment, Katt does not see the floodplain issue as a problem, but an opportunity to be taken advantage of in the overall development of these two properties.

ANNEXATION NO. 05004;

CHANGE OF ZONE NO. 05022

FROM AG AGRICULTURAL TO R-3 RESIDENTIAL;

and

PRELIMINARY PLAT NO. 05003,

HIGHLAND VIEW,

ON PROPERTY GENERALLY LOCATED

AT N.W. 12TH STREET AND ALVO ROAD.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: August 17, 2005

Members present: Esseks, Krieser, Pearson, Taylor, Sunderman, Carroll, Larson, Carlson and Bills-Strand.

Staff recommendation: Approval of the annexation, subject to an annexation agreement; approval of the change of zone; and conditional approval of the preliminary plat.

Ex Parte Communications: None.

Proponents

1. Jason Thiellen of EDC, presented the proposal on behalf of **Prairie Homes**. This is a 566 lot single family residential project in northwest Lincoln. It will have lots ranging from 6,000 to 10,000 square feet for a diverse supply of housing opportunity for north Lincoln.

Thiellen proposed amendments to the conditions of approval:

- 1.1.3 Add the following note to the General Notes; "No more than 115 lots shall be final platted until there ~~are two~~ is a permanent access paved roads from this development to a system of continuous paved streets, ~~and~~ At such time ~~the temporary access road to Purple Heart Highway shall be removed~~ as there are two permanent paved access roads from this development, the temporary access road/connection to Purple Heart Highway shall be removed. The temporary connection to Purple Heart Highway shall be a full movement intersection".
- 1.1.5 Show a street connecting from ~~Avalance Rd. to Snowshoe Dr. in block 11, and from Silverado Dr. to Lander Dr. in Block 13~~ unless the City Council grants the waiver to block length.

- 1.1.6 Show Lot 5 I.T., the tract of land to the south, on the site plan. Lots 62-67, Block 12, shall not be final platted until such time that either satisfactory engineering information is provided to Public Works to show a street connection to Lot 5 I.T., or Lot 5 I.T. is shown to be a nonbuildable lot, and show access to the lot
- 1.1.9 ~~Show a full median on Highway 34 at the temporary access. Label the access as right-in, right-out only.~~
- 1.1.12 ~~Show only one street taking access to W. Alvo Rd. east of Jasper Dr. at approximately the quarter mile point. Remove N.W. 17th Street right-in/right-out access to West Alvo Road.~~
- 1.1.15 ~~Show the driveway for the house at 1486 W. Alvo Rd. Relocate NW 15th St. so it is west of the driveway.~~
- 1.1.16 ~~Correct the name NW 19th St. on Sheet 7. There is no NW 19th St. on the site plan.~~
- 1.1.17 ~~Amend the Phasing Plan if the temporary access to W. Alvo Rd. is not granted. Include Phase 2 with Phase 1 and end Phase 1 at Lots 13 & 14, Block 23. Revised phasing plan to be agreed upon between the developer, the Planning Department and Public Works Department.~~

Condition #1.1.5 refers to the block length waiver. The condition requires the developer to bring the street through, but the developer has made significant attempts to preserve the wetlands, minimize the grading and maximize the use of the existing drainage ways to provide the most effective use of the infrastructure. Bringing a street through this area will minimize all of that. It became a design challenge. The developer has agreed to put in a 30' wide pedestrian way as opposed to the street connection. There are several accesses on the block, so Thiellen does not believe it is a block length issue.

Thiellen advised that Public Works has agreed to work with the developer to minimize the amount of sanitary sewer depth over 15 feet, so Public Works is no longer objecting to that waiver.

2. Peter Katt appeared on behalf of the applicant to address the issue related to the Highway 34 access (Condition #1.1.3). This project has been under development for quite a bit longer than indicated in the staff report. The challenge for this site has been to find a connection point (paved road) that allows reasonable access and reasonable development for the project. He acknowledged that the staff has worked hard, but they have agreed to disagree on this issue. The client and staff have no objection to the temporary access point to Hwy 34. This would be temporary until there are two other permanent paved access points, at which time the temporary access would close. However, the applicant believes that this access point should be comparable to what exists on Hwy 34 at the Fallbrook interchange. Staff suggests

that the Hwy 34 intersection should simply be a right-in and right-out, and the applicant does not believe that makes much sense. The full movement intersection being requested by the applicant is in compliance with the NDOR in terms of spacing. Public Works wants to preserve the future traffic capacity of Hwy 34 and that is why we have agreed to a temporary access. Until sufficient other neighborhood access exists, the applicant requests that this be a full movement intersection (proposed amendment to #1.1.3 and deletion of Condition #1.1.9).

Carlson inquired as to what constitutes sufficient connection to trigger closing the temporary access. Katt suggested it would be the second access point out of the neighborhood to a continuous paved street. At this point in time, the applicant believes it is most reasonable that eventually the platting and roadway network will connect to the east through Fallbrook. Katt then explained the potential access points. He does not know when or how the second access will come, but that will be the appropriate time to close the Hwy 34 access. The developer will construct a cul-de-sac and the connection will be asphalt as opposed to any permanent-looking street connection. He also believes they will have to bond and provide for a traffic light when the traffic warrants are met.

There was no testimony in opposition.

Carlson asked staff to address the access issue. Tom Cajka of Planning staff stated that staff is still recommending a "right-in right-out only" onto Hwy 34 because it is a safety factor and minimizes conflicts. Dennis Bartels of Public Works stated that previously, Public Works reluctantly agreed to another intersection at Hwy 34 and he is opposed to the full movement intersection. He further stated that it is not the end of the world if it ends up being full access, but Public Works definitely does not want a traffic signal there. A traffic signal will not be installed at this temporary location. Hwy 34 is designed as an expressway and it would be the position of Public Works that there not be any more accesses on Hwy 34. If the Commission approves full access, Bartels does not want any reference made to a traffic signal.

Bills-Strand confirmed that Bartels could live with it if it were full access. Do you think it would be more dangerous for people to go down, turn around and come back? Bartels stated that he does not see the danger in that movement. He can see why the developer would want full access. The problem with this development is that it is occurring before there is any street infrastructure in the area. Alvo Road is gravel between N.W. 27th and N.W. 12th.

Bartels did agree with the statement made by the applicant on the sanitary sewer depth issue. He is willing to work with them and willing to recommend approval of an exception to allow the sewer depth over 15'.

Cajka stated that staff:

would agree with the amendment to Condition #1.1.3, if the last sentence is deleted: "The temporary connection to Purple Heart Highway shall be a full movement intersection". Also, Condition #1.1.9 should not be deleted.

disagrees with the proposed amendment to Condition #1.1.5 which deals with the block length.

agrees with the amendment to Condition #1.1.6.

agrees with the amendment to Condition #1.1.12 if "right-in/right-out" is stricken.

agrees with the amendment to Condition #1.1.15, #1.1.16 and #1.1.17.

Esseks inquired as to who will pay for the extension of the sewer and water lines. Cajka stated that the developer is responsible for the infrastructure within the development. Bartels stated that the sewer to serve this will have to run parallel to Hwy 34 west to the intersection at N.W. 27th Street. The developer will have to pay for it. There is water at the intersection of N.W. 12th and Alvo Road, which is an impact fee facility. The developer would be paying for everything except what the city would typically subsidize.

Response by the Applicant

In terms of the block length issue, Katt believes that staff's disagreement is based upon the block length requirement that is pretty arbitrary in how you compute block lengths, particularly in subdivisions where there are no longer square blocks. He believes that this development meets the intent and purpose of the block length. They have included a pedestrian easement and would request that the block length be waived as requested.

The access issue is a difference of opinion in terms of whether the Hwy 34 access should be a full movement or right-in/right-out. Katt believes it is appropriate to be a full movement intersection. The competing subdivision to the east has a full movement intersection which will be permanent, and that's the one staff points us to. But we can't get there. The road network is not in place, so Katt believes it is appropriate to have the temporary access be a full movement access until they can get permanent access.

Taylor is concerned about the emissions from the Kawasaki plant. He is also concerned about the airport fly zone from the airport and whether it will have any affect on the quality of the homes. Katt responded, stating that this property has been shown in the Comprehensive Plan as appropriate for residential development for a number of years. The community has said that this is an appropriate area. It is not in such close proximity that the health and safety of the future residents are jeopardized by the Kawasaki plant. With regard to the noise

easement area, there are a number of neighborhoods that are within the airport fly zone. The community has made a decision that residential development within those zones is safe. As far as the relative cost or price mix, it is not likely that these homes will be in the Fallbrook price range. The community needs a range of housing. His client's current thoughts for this area are that this neighborhood that will develop on the west side of Fallbrook will be comparable in style of homes and quality and pricing to the Highlands.

Larson inquired whether there is a median on Hwy 34 where the temporary access is located. Katt explained that there is currently a grassed median. They filled in the median at Fallbrook and paved it. What is done in that right-of-way will need approval from NDOR. Hwy 34 is an expressway designation, which calls for intersections at half mile intervals. This access is very close to being ½ mile from the Fallbrook intersection.

Carlson noted that occasionally we see some of these pedestrian easements not constructed prior to the home construction. What can you tell me to assure the alternate connection? Katt believes that the regulations now require those easements to be constructed at the time of building the streets. He does not believe it will be the same problem we have seen in the past. The width of this pedestrian easement is 30 feet, while they were crammed into a 10' area in the past.

Esseks is concerned about serious safety risk. Let's say the traffic is heading toward Lincoln in the morning, with people heading east toward Kawasaki at the same time. He thinks it is a problem if there is not a traffic light. It might be safer to turn right and then come around. We do have a responsibility to protect the public health and safety. Katt's response was that all of us will have differing opinions as to the safety issue. That traffic occurs for maybe 10-15 minutes a day. Overall, through a 24-hour day, Katt believes we are better served by having a full movement access. He thinks the full movement access is safer.

ANNEXATION NO. 05004

ACTION BY PLANNING COMMISSION:

August 17, 2005

Carlson moved approval, subject to an annexation agreement, seconded by Carroll and carried 9-0: Esseks, Krieser, Pearson, Taylor, Sunderman, Carroll, Larson, Carlson and Bills-Strand voting 'yes'. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 05022

ACTION BY PLANNING COMMISSION:

August 17, 2005

Carlson moved approval, seconded by Pearson and carried 9-0: Esseks, Krieser, Pearson, Taylor, Sunderman, Carroll, Larson, Carlson and Bills-Strand voting 'yes'. This is a recommendation to the City Council.

PRELIMINARY PLAT NO. 05003

ACTION BY PLANNING COMMISSION:

August 17, 2005

Larson moved to approve the staff recommendation of conditional approval, with the amendments requested by the applicant, seconded by Bills-Strand.

Bills-Strand believes it should be a full movement access. She likes stop lights and she would think that if a stop light is warranted that it should be put up for the safety of the people. It could be triggered as opposed to automatic. She also does not believe that the connecting street is necessary. There are plenty of accesses in and out of that area. She thinks they have reached a good compromise.

Carroll has a concern about the full movement access because people who live out there will get used to it and will be upset when it is closed. The neighborhood association will say they don't want to close it and will want a traffic light. He does not think it is fair. We need to say no, and not give them the opportunity to have it for a short period of time and then take it away from them. He agrees with staff.

Carroll moved to amend Condition #1.1.3 to staff recommendation, which deletes the full movement access and provides for right-in/right-out only, seconded by Esseks and carried 7-2: Esseks, Krieser, Pearson, Taylor, Sunderman, Carroll and Carlson voting 'yes'; Larson and Bills-Strand voting 'no'. This amendment also leaves Condition #1.1.9 in place.

Main motion for conditional approval, as set forth in the staff report, with the amendments requested by the applicant, except striking the last sentence from the amendment to Condition #1.1.3 and retaining Condition #1.1.9, carried 9-0: Esseks, Krieser, Pearson, Taylor, Sunderman, Carroll, Larson, Carlson and Bills-Strand voting 'yes'. This is final action, unless appealed to the City Council within 14 days.

There being no further business, the meeting was adjourned at 3:40 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on August 31, 2005.